

RETURN DATE: FEBRUARY 9, 2021

SUPERIOR COURT

PLANNED DEVELOPMENT ALLIANCE

OF NORTHWEST CONNECTICUT, INC. AND

SPECTACLE RIDGE ASSOCIATION, INC. JUDICIAL DISTRICT OF NEW BRITAIN

AT NEW BRITAIN

v.

CONNECTICUT SITING COUNCIL AND

HOMELAND TOWERS, LLC AND

NEW CINGULAR WIRELESS PCS, LLC JANUARY 20, 2021

VERIFIED COMPLAINT

TO THE SUPERIOR COURT IN AND FOR THE JUDICIAL DISTRICT OF NEW

BRITAIN AT NEW BRITAIN, on January 19, 2020, comes **PLANNED DEVELOPMENT**

ALLIANCE OF NORTHWEST CONNECTICUT, INC., a Connecticut non-stock

corporation organized and existing under the laws of the State of Connecticut, with its

principal office at 100 TREASURE HILL ROAD, SOUTH KENT, CT, 06785, and

SPECTACLE RIDGE ASSOCIATION, INC., a Connecticut non-stock corporation

organized and existing under the laws of the State of Connecticut, with its principal

office at 71 RICHARDS ROAD, SOUTH KENT, CT, 06785, aggrieved by and appealing

from a decision by the **CONNECTICUT SITING COUNCIL** on December 7, 2020,

granting a certificate of environmental compatibility and public need for the construction,

maintenance and operation of a telecommunication facility at 93 Richards Road, Kent,

Connecticut owned by **HOMELAND TOWERS, LLC**, a foreign limited liability company

with a principal place of business at 9 HARMONY STREET DANBURY, CONNECTICUT 06810 and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company with an office at 84 Deerfield Lane, Meriden, Connecticut 06450, and complains and says:

FIRST COUNT (Administrative Appeal Pursuant to C.G.S. § 4-183)

1. Plaintiff, Planned Development Alliance of Northwest Connecticut, Inc. ("PDA") is a Connecticut non-stock corporation, with its principal office at 44 Rock Hall Road, Colebrook, Connecticut 06021. PDA is a nonprofit, tax-exempt charitable organization under Section 501(c)(3) of the Internal Revenue Code and its members and supporters include real property owners in the Town of Kent, Connecticut and within the visual corridor of the Tower and is an organization concerned for the orderly development and environmental integrity of northwest Connecticut including the area in Kent where the proposed facility is to be located. PDA is aggrieved by the Connecticut Siting Council's decision as more fully set forth below.

2. Plaintiff, Spectacle Ridge Association, Inc. ("SRA") is a Connecticut non-stock corporation operating a homeowner's association with an address at 71 Richards Road, South Kent, Connecticut whose members own real property in close proximity and with direct views of the telecommunications facility that is the subject of this appeal.

3. Defendant, Homeland Towers, LLC ("Homeland") is a foreign limited liability company doing business in Connecticut with a business address at 9 Harmony Street, Danbury, Connecticut, 06810.

4. Defendant, New Cingular Wireless PCS, LLC d/b/a AT&T ("AT&T") is a Delaware limited liability company doing business in Connecticut with a business at Delaware limited liability company with an office at 84 Deerfield Lane, Meriden, Connecticut, 06450.

5. Defendant Connecticut Siting Council ("Council") is an agency of the State of Connecticut with an address at Ten Franklin Square, New Britain, Connecticut 06051. The Council has jurisdiction over the siting of telecommunications facilities pursuant to the Public Utility Environmental Standards Act, Chapter 277a of the Connecticut General Statutes (C.G.S. §§ 16-50g through 50ll).

6. On or about February 28, 2020, Homeland and AT&T filed an application for a certificate of environmental compatibility and public need for the development of a telecommunications tower to be located at 93 Richards Road, Kent, Connecticut ("the Tower").

7. PDA and SRA were granted intervenor and Connecticut Environmental Protection Act intervenor status, in Docket #488 pursuant to §§ 4-177a, 16-50l, 16-50n(c), and 22a-19 of the Connecticut General Statutes and thus have standing to appeal the decision by virtue of their rights have being declared and denied by the Council decision in Docket #488 and by virtue of the likelihood of unreasonable impacts to natural resources as further noted herein.

8. On December 7, 2020, in Docket #488, the Council granted Homeland and AT&T's request for a certificate of environmental compatibility and public need for the development of a telecommunications tower to be located at 93 Richards Road, Kent, Connecticut ("the Tower").

9. The Council transmitted its decision to PDA and SRA on December 7, 2020.

11. Pursuant to C.G.S. § 4-176(h) and Section 16-50j-38 of the Regulations of Connecticut State Agencies, Docket #488 is a contested case.

10. Pursuant to C.G.S. § 4-176(h) and Section 16-50j-38 of the Regulations of Connecticut State Agencies, the Council's decision granting Docket #488 is a contested case and a final decision for purposes of appeal in accordance with the provisions of C.G.S. § 4-183.

11. Members of SRA own real property in and about a scenic and unspoiled lake and ridgeline area of Kent, known as Spectacle Ridge and South Spectacle Lake, which is located within an area Congress designated as the Upper Housatonic Valley National Heritage Area – one of just 50 such designations in the country. SRA's members have direct line-of-sight views of the Tower and further they are statutorily aggrieved under Conn.Gen.Stat. §22a-19 by virtue of the reasonable likelihood of unreasonable impairment to natural resources of the State as described herein.

12. Appellant PDA is aggrieved by the Council's granting of Docket #488 pursuant to Conn.Gen.Stat. §22a-19 of the Connecticut Environmental Protection Act in that unspoiled scenic view resources of the state are reasonably likely to be unreasonably impaired by the erection of the Tower within the viewshed of the scenic Spectacle Ridge ridgeline and scenic South Spectacle Lake area.

13. The Council's decision is unlawful and reasonably likely to impair scenic viewshed resources of the State in that:

(a) a feasible and prudent alternative exists to the Tower in the form of small cell technology which consists of utility pole mounted antennas within existing road rights of

way which have minimal visual impact while serving the public need for telecommunications coverage and capacity in the area proposed to be covered by the Tower.

(b) The Council arbitrarily and capriciously disregarded un rebutted evidence in the record regarding the feasibility and efficacy of small cell technology which AT&T has successfully deployed in Connecticut and Massachusetts and the Town of Kent to provide for the public need for wireless communication. Despite this the Council failed to require to and AT&T did not submit any information regarding the operation of its small cell installations.

(c) The Council disregarded its statutory responsibility pursuant to §16-50j-1 of The Public Utility Environmental Standards Act (PUESA), Title 16, Chapter 277a, which mandates the Council to “balance the need for adequate and reliable public utility services at the lowest reasonable cost to consumers with the need to protect the environment and ecology of the state and to minimize damage to scenic, historic, and recreational values” while “encouraging research to develop new and improved methods oftransmitting and receiving... telecommunications signals with minimal damage to the environment” in that the evidence in the record of a small cell alternative to the Tower provided a way to serve the public need for coverage at similar cost while providing greater protection for scenic resources through a lower impact alternative.

(d) The Council decision evidences that the Council impermissibly shifted the burden of proof from the Applicants, Homeland and AT&T, onto the intervening parties by failing to require AT&T or Homeland to submit any data on AT&T’s small cell installations

alternatives despite evidence PDA had submitted into the record showing that a small cell array would cover more miles of road and more residences than the Tower.

(e) The Council disregarded its responsibility to balance environmental compatibility with the public need for the Tower by failing to require Homeland and/or AT&T to perform an analysis on the provision of wireless telecommunication service through the implementation of multiple shorter towers on the pretext that such a configuration would be inconsistent with the policy set forth in Conn.Gen.Stat §16-50p(b)(2) to prevent the unnecessary proliferation of towers despite the fact that multiple *shorter* towers may have resulted in greater environmental compatibility as the Council has noted in the past.

(f) The Council disregarded its duty to balance the public need for wireless service with environmental compatibility by failing to require a shorter tower where evidence in the record showed that there would be no significant loss of coverage with the construction of a tower at a significantly lower height.

14. The Council's decision is further unlawful in that during the Council's meeting at December 3, 2020, at least one member of the Council who was not present for the 4 hearings held in this matter indicated during a straw vote on the application, without a review of the record, that he would vote "with the majority" when there was no majority at that time and then indicated prejudgment of the application by indicating a preference for a tower even before having reviewed the record. Given that the vote on the Council's decision was a vote of 4 in favor to 3 against, the approval would have failed had this member properly recused himself from the vote.

DEMAND FOR RELIEF

The Appellants seek the following relief:

1. That the Court sustain the appeal, reverse the decision of the Council, and order the Council to deny the application.
2. Awarding Appellants reasonable fees and expenses, including but not limited to attorney's fees, witness fees, and costs associated with the administrative and court proceedings, pursuant to Conn.Gen.Stat. §4-184a and §22a-18(e); and
3. Such other relief as appears equitable and appropriate to the Court.

The Plaintiffs, PDA and SRA,
Appellants,

By _____
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VERIFICATION

The undersigned, Todd Powell, duly authorized Authorized Representative
of Planned Development Alliance of Northwest Connecticut, duly sworn, hereby verifies
that the above application is true and accurate to the best of his knowledge and belief.
This document was sworn and executed under Governor Lamont's Executive Order 7Q
dated March 30, 2020, as reauthorized, providing for the remote notarization and
execution of documents.

Todd Powell

Sworn and subscribed before me this 15th day of January 2021.

Keith R. Ainsworth, Esq.

~~Notary Public My Commission Expires~~ xx

VERIFICATION

The undersigned, Matthew J. Sippel, duly authorized member of Spectacle Ridge Association, duly sworn, hereby verifies that the above complaint is true and accurate to the best of his knowledge and belief. This document was sworn and executed under Governor Lamont's Executive Order 7Q dated March 30, 2020, as reauthorized, providing for the remote notarization and execution of documents.

A handwritten signature in blue ink, reading "Matthew J. Sippel", written over a horizontal line.

Sworn and subscribed before me this 19th day of January 2021.

Keith R. Ainsworth, Esq.